

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF STATES OF NEW
YORK, PENNSYLVANIA,
CALIFORNIA, CONNECTICUT,
DELAWARE, DISTRICT OF
COLUMBIA, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA,
NEVADA, NEW JERSEY, NEW
MEXICO, NORTH CAROLINA,
OREGON, RHODE ISLAND,
VERMONT, VIRGINIA, AND
WASHINGTON

DOCKET NO. C2022-1

**COMPLAINANTS' OPPOSITION TO THE
UNITED STATES POSTAL SERVICE'S MOTION TO DISMISS**

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania
MICHAEL J. FISCHER
Chief Counsel & Executive Deputy Attorney
General
AIMEE D. THOMSON
JACOB B. BOYER
RYAN B. SMITH
Deputy Attorneys General
Pennsylvania Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103
(267) 374-2787
athomson@attorneygeneral.gov
mfischer@attorneygeneral.gov

LETITIA JAMES
Attorney General
State of New York
MICHAEL J. MYERS
Senior Counsel
RACHEL HANNAFORD
LINDSAY MCKENZIE
Assistant Attorneys General
Office of the New York State Attorney
General
28 Liberty Street
New York, New York 10005
(212) 416-8250
rachel.hannaford@ag.ny.gov
lindsay.mckenzie@ag.ny.gov

Counsel for Complainants
(additional counsel listed on last page)

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INTRODUCTION

The Postal Service's new ten-year strategic plan, *Delivering for America*, claims it will transform the Postal Service in order to quickly achieve financial sustainability and service excellence. Under the Plan, the Postal Service projects that within two years, it will generate a positive net income and reliably deliver 95 percent of the mail on time. To accomplish these ambitious goals, the Postal Service has, without feedback from key stakeholders or the Postal Regulatory Commission, announced extraordinary initiatives that will change all aspects of postal services nationwide—from transportation and processing networks to retail facilities, from service standards to product priorities. Many of these initiatives are already underway, and the Postal Service has repeatedly declared that success depends on implementing the totality of the Plan.

The Postal Service nonetheless insists that it need not present its exceptional Plan to the Commission for review. Instead, the Postal Service intends to seek advisory opinions at intermittent and unspecified future dates over the next decade, and only on isolated subcomponents of the Plan. But because the Plan is a holistic transformation of the Postal Service with many interdependent strategies, the Commission will spend three months assessing the merits of a subcomponent whose implementation and outcome will likely not reflect financial and operational reality. This is not an efficient use of the Commission's time and expertise. Nor is it consistent with the text and purpose of 39 U.S.C. § 3661.

The States' Complaint raises a colorable claim that the Plan should be reviewed by the Commission pursuant to Section 3661(b). Allowing the Complaint to proceed and requiring the Postal Service to present the whole Plan for an advisory opinion will provide the Commission with a complete picture of how the Postal Service intends to change over the next ten years. Section 3661(b) review will enable the Postal Service to benefit from the Commission's

objective analysis, ensuring that the Plan reflects a transformation that will actually achieve financial stability and service excellence. And it will enable the public and other mail stakeholders to engage in a process involving unprecedented decisions that impact the future of a quintessential public service.

Because the Complaint raises material issues of law and fact regarding whether the Plan is subject to review under Section 3661(b), the Commission should deny the Postal Service's motion to dismiss.

BACKGROUND

On March 23, 2021, the Postal Service announced a new ten-year strategic plan, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence* (the "Plan") (Complaint Ex. 1). The Plan superseded the five-year strategic plan issued just one year prior. *See Ready-Now → Future-Ready, The U.S. Postal Service Five-Year Strategic Plan (FY2020-FY2024)*.¹ The Postal Service claims the Plan is necessary to address an organization in "crisis." Plan at 41; *see id.* at 2. Among other problems, the Postal Service asserts that the "dramatic evolution of the mailing and shipping industries over the past decade—accelerated by the COVID-19 pandemic—requires a new business model and a reorientation of the Postal Service's management, network, and processes." *Id.* at 4; *see also id.* at 5 ("[T]here is a compelling need to redesign our operating model to enable growth in our package delivery business.").

In order to "transform[]" the Postal Service's "business and operations," the Plan sets in motion "clear strategies" that the Postal Service claims will allow it "to quickly achieve financial sustainability and service excellence." *Id.* at 3. These strategies constitute significant changes to

¹ <https://about.usps.com/strategic-planning/five-year-strategic-plan-2020-2024.pdf>.

all aspects of postal services, including acceptance, collection, delivery, sorting, transportation, and ancillary functions. *See* Compl. ¶¶ 50-63. For example, in addition to slowing service standards, the Postal Service will “transform [its] processing and logistics network” by consolidating and realigning its facilities, including proceeding with consolidations deferred from Docket No. N2012-1. Plan at 28-29. It will also transition all 21 Network Distribution Centers and 15 to 20 Processing and Distribution Centers into Regional Distribution Centers dedicated *only* to package processing, and it will change the distribution of equipment at facilities across the country. *Id.* The Postal Service will merge “[l]etter and flat products . . . into streamlined, shape-based mail flows within [its] Processing and Distribution Centers.” *Id.* at 29. The Plan also fundamentally alters how the Postal Service transports and delivers mail across the country by consolidating the Postal Service’s transportation network, which delivers to 160 million addresses every day, *id.* at 30; moving significantly more mail by ground instead of air, *id.*; and changing its routes and delivery unit footprint, *id.* at 15 (“Our delivery unit footprint and route structures are not aligned”); *see also id.* at 31 (stating that the Postal Service will “improve” its “delivery unit footprint”). And, the Postal Service will change its vast retail network by, among other things, adjusting locations, hours and services. *Id.* at 34.

The Postal Service projects that executing the Plan will enable it to operate with a positive net income beginning in Fiscal Year 2023 or 2024 and will ultimately reverse a projected \$160 billion in losses over the next ten years. *Id.* at 7. But the Postal Service asserts that success depends upon implementing “the full breadth and totality of the plan elements.” *Id.* at 40; *see also id.* at 3, 7.

Although the Plan as a whole reflects a significant and transformative change to the Postal Service, the Postal Service has not presented the entire Plan to the Commission for an

advisory opinion. Instead, the Postal Service intends to request advisory opinions for only certain subcomponents of the Plan, though the Postal Service will not specify exactly which subcomponents it will present nor the timeline for such review. To date, the Commission has only issued two advisory opinions: the first on a proposal to add up to two days to service standards for First-Class Mail and Periodicals, which will slow 39 percent of First-Class Mail and Periodicals nationwide (Docket No. N2021-1); and the second on a proposal to add up to two days to service standards for First-Class Package Service, which will slow nearly one third of First-Class Package Service nationwide (Docket No. N2021-2). The Commission’s advisory opinions on these proposals each criticized the Postal Service’s assumptions, analyses, and modeling. Compl. ¶¶ 79-92. Neither proceeding addressed other aspects of the Plan and neither advisory opinion addressed the Plan as a whole.

ARGUMENT

I. Standard of review

The Commission may grant the Postal Service’s motion to dismiss only if it finds the States’ Complaint does not “raise[] material issues of fact or law.” 39 U.S.C. § 3662(b)(1)(A). The Commission should assume the veracity of the States’ well-pleaded factual allegations and “liberally” grant the States the benefit of all inferences derived from the facts alleged. *See Zukerman v. United States Postal Serv.*, 961 F.3d 431, 441 (D.C. Cir. 2020) (cleaned up).

At this stage, the States need not prove a violation of Section 3661(b). Postal Rate Comm’n, Order 1307, *Order Partially Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings*, at 9-10 (Mar. 20, 2001) (C2001-1)² [“Order 1307”]. Instead, the Commission evaluates whether a complaint is supported by a

² <https://www.prc.gov/docs/26/26489/ord-1307.pdf>.

“reasonable belief” that a violation has occurred. *Id.* To satisfy this standard, a complaint need only allege a “colorable” claim that a change “likely” falls within Section 3661(b), which does not require total certainty regarding whether the change implicates Section 3661(b). *Id.*; Postal Reg. Comm’n, *Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches*, at 11 (Mar. 10, 2010)³ [“N2009-1 Opinion”] (“[I]t is not necessary to decide that the challenged changes are in fact embraced in Section 3661. It is necessary to conclude . . . that most likely they are[.]”); *see also* Postal Reg. Comm’n, *Advisory Opinion on Retail Access Optimization Initiative*, at 1 (Dec. 23, 2011)⁴ [“N2011-1 Opinion”] (“The Commission . . . finds that the Retail Access Optimization Initiative is *likely* to affect service on a nationwide basis.” (emphasis added)).

The Commission has explained that the “colorable” claim standard is appropriate because a higher standard could require the Commission to hear evidence on the complainant’s allegations prior to deciding whether or not the case may proceed past the Complaint and Answer stage, which would “be inappropriate because, in many cases, such an evidentiary-based ruling would also be conclusive as to the outcome of the complaint.” Postal Rate Comm’n, Order 1461, *Order on Complaint on Express Mail*, at 14 n.12 (Apr. 18, 2006) (C2005-1)⁵ [“Order 1461”] (citing Order 1307 at 9).

Where the change “likely” falls within Section 3661(b) of the statute, the claim is “arguabl[e]” and the complainant shall have the “opportunity to develop evidence and make a case.” Order 1307 at 9. Applying this standard, the Commission has sustained complaints that

³ https://www.prc.gov/docs/67/67174/Advisory_Opinion_031010.pdf.

⁴ https://www.prc.gov/docs/78/78971/N2011-1_AdvisoryOP.pdf.

⁵ <https://www.prc.gov/docs/48/48324/Order1461.pdf>.

“raise[] the possibility” that the change falls within the scope of Section 3661(b). *E.g.*, Postal Rate Comm’n, Order 1320, *Order Denying Postal Service Motion to Dismiss Complaint, Allowing Amendment of Complaint and Instituting Formal Complaint Docket*, at 7 (Sept. 12, 2001) (C2001-3)⁶ [“Order 1320”].

II. The Commission can and should review the Plan.

The Plan reflects a change within the scope of Section 3661(b). The Plan encompasses a series of strategies to fundamentally change postal services and operations, which the Postal Service insists it must implement in totality to establish the financial stability and service excellence it claims the Plan will yield. In public, the Postal Service lauds the Plan as a set of concrete, definite steps that are already being executed. In its motion to dismiss, however, the Postal Service portrays the Plan as a mere aspiration that it may or may not pursue—without presenting any evidence or other basis to support this newfound characterization.

If the Commission cannot review the Plan until every last detail is “explored, developed, and vetted,” United States Postal Service’s Motion to Dismiss (“USPS Br.”) at 9, then the Commission will have to wait a decade—at which point it will be too late “to provide an independent, expert critique of Postal Service programs before they are put into practice” and too late “to allow the public to contribute views, objections, and insights to the planning and execution of service changes.” Postal Rate Comm’n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 65-66 (Apr. 22, 1976) (N75-1)⁷ [“N75-1 Opinion”]. Neither the text of Section 3661 nor the Commission’s precedent requires such finality or delay. Nor do other provisions of the Postal Reorganization Act obviate the Postal Service’s obligations

⁶ <https://www.prc.gov/docs/26/26833/order-1320.pdf>.

⁷ <https://www.prc.gov/prcarchive/viewpdf.aspx?docid=508276839>

under Section 3661. Now is the best—and only—time for the Commission to review the Plan as a whole, gain a clear understanding of what the Postal Service intends to do over the next ten years, and assess whether it will actually put the Postal Service on a path to financial and service success.

A. Section 3661 review is necessary and appropriate now.

Section 3661 proceedings are inherently prospective. N75-1 Opinion at 66. Indeed, as the Postal Service rightly acknowledges, it must submit a request for an advisory opinion *before* implementing a change in the nature of postal services with nationwide effect. USPS Br. at 8. Yet the Postal Service claims that it is both too early and inappropriate for the Commission to review the Plan. USPS Br. at 8-10, 16-18. Neither argument accords with the evidence before the Commission, the text and purpose of Section 3661, or the policy goals contemplated by Congress.

1. The Plan is in effect.

The Complaint raises a colorable claim that the Plan is currently being implemented. The Postal Service argues that Commission review is unwarranted because the Plan is “only . . . a plan,” suggesting that because the Plan does not expressly order Postal Service employees to take action, it cannot be a “change.” USPS Br. at 1. But every proposal about a “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” is an “anticipated strateg[y] that the Postal Services [*sic*] expects to pursue,” *id.*, sometimes over the course of many years, *see, e.g.*, Postal Rate Comm’n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 7 (Dec. 19, 2006) (N2006-

1)⁸ [“N2006-1 Opinion”]. The Postal Service further portrays the Plan as a document containing only “potential initiatives” that the Postal Service may or may not pursue. USPS Br. at 6.⁹ But the Postal Service has provided no evidence or other basis to substantiate its new characterization of the Plan as mere aspiration.

To the contrary, the evidence demonstrates that the Plan established a concrete set of strategies and is already in effect. In a September 29, 2021, interview, Postmaster General Louis DeJoy explained that the Plan is now in the “execution phase.” Judy de Torok, *An online interview with Postmaster General Louis DeJoy*, Postal Posts (Sept. 29, 2021) (at 9:07-9:30).¹⁰ Postmaster General DeJoy proceeded to list many parts of the Plan the Postal Service has already implemented. *Id.* Among other things, the Postal Service has:

- Changed service standards for First-Class Mail and Periodicals. *Revised Service Standards for Market-Dominant Mail Products*, 86 Fed. Reg. 43,941 (Aug. 11, 2021);¹¹ Compl. ¶ 128.
- Increased prices for market-dominant products. USPS, *2021 Postage Price Changes* (Sept. 16, 2021);¹² Compl. ¶ 62.
- Changed its entire organizational structure. Compl. ¶ 59.

⁸ <https://www.prc.gov/docs/55/55431/N2006-1AdvDec.pdf>.

⁹ See also USPS Br. at 1 (“The Plan itself effects no changes[.]”); *id.* (“anticipated strategies”); *id.* (“may constitute such changes once the Postal Service’s strategic deliberations crystallize into concrete operational proposals”); *id.* at 6 (“anticipated initiatives”); 8 (“still developing a proposal that is not subject to imminent implementation”); *id.* at 8-9 (“anticipated initiatives that are intended to be implemented over a course of years”); *id.* at 9 (“subject to various stages of deliberation, and hence are still undergoing preparation and revision”); *id.* at 10 (“early stages of the Postal Service’s strategic or operational planning”); *id.* at 13 (“any such proposed changes to the retail network”); *id.* at 13 n.10 (“Assuming, of course, that the Postal Service determines to go forward with those initiatives.”).

¹⁰ <https://uspsblog.com/an-online-interview-with-postmaster-general-louis-dejoy/>.

¹¹ <https://www.govinfo.gov/content/pkg/FR-2021-08-11/pdf/2021-17127.pdf>.

¹² <https://faq.usps.com/s/article/2021-Postage-Price-Changes#:~:text=The%20price%20changes%20will%20raise,First%2DClass%20Mail%20volume%20declines>.

- Awarded a ten-year contract to manufacture new postal delivery vehicles. USPS, *U.S. Postal Service Awards Contract to Launch Multi-Billion-Dollar Modernization of Postal Delivery Vehicle Fleet* (Feb. 23, 2021);¹³ Compl. ¶ 57.
- Added 138 package-sorting machines and leased an additional 45 annex facilities. USPS, *U.S. Postal Service Accelerates Key Network Infrastructure Investments to Meet Customers' Evolving Mailing and Shipping Needs Ahead of 2021 Holiday Season* (Apr. 27, 2021);¹⁴ see Compl. ¶ 54.
- Begun consolidating mail processing operations at 36 facilities. *Id.*; USPS, *Delivering for America – Operational Mail Moves*; ¹⁵ USPS, *Mail Processing Operations* (Apr. 2021); see Compl. ¶ 54.¹⁶

The language of the Plan itself also belies the Postal Service's claim that the Plan is in the "early stages," USPS Br. at 10, and therefore some subcomponents may ultimately not be implemented. The Plan is definite and resolute, "establish[ing] clear strategies to quickly achieve financial sustainability and service excellence." Plan at 3. The Plan discusses implementation of

¹³ <https://about.usps.com/newsroom/national-releases/2021/0223-multi-billion-dollar-modernization-of-postal-delivery-vehicle-fleet.htm>.

¹⁴ <https://about.usps.com/newsroom/national-releases/2021/0427-usps-accelerates-key-network-infrastructure-investments-ahead-of-2021-holiday-season.htm>.

¹⁵ https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Mail_Moves_FactSheet.pdf (last visited Nov. 4, 2021).

¹⁶ https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Mail_Moves_FacilityList.pdf.

The Postal Service cannot evade review by calling these consolidations a continuation of prior initiatives reviewed by the Commission in 2012 and paused in 2015. *See* USPS, *Delivering for America*, <https://about.usps.com/what/strategic-plans/delivering-for-america/> (last visited Nov. 4, 2021) ("ongoing Postal Service strategy"); *Advisory Opinion on Mail Processing Network Rationalization Service Changes*, at 46 (Sept. 28, 2012) (N2012-1), https://www.prc.gov/docs/85/85269/Advisory_Opinion_%20PDF%20_09282012.pdf ["N2012-1 Opinion"]. That review was based on studies and data that are almost a decade old. As the Office of Inspector General cautioned *six years ago*, when consolidations were initially paused: "As the data used [to evaluate a potential consolidation] becomes older, there is increased risk that there are changes . . . that could impact whether the consolidation is still cost justified." USPS OIG, Report No. NO-AR-15-007 *Area Mail Processing Consolidations*, at 10 (June 15, 2015), <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/no-ar-15-007.pdf>.

The staleness of prior data, the enormity of changes within the Plan, and the significant passage of time—"with several changes of Postmasters General, several changes in Governors, several reorganizations, and numerous changes in operations, technology - and [] public need"—all support the need for an advisory opinion here. *See* Order 1320 at 8.

these strategies by using the word “will”—not “plan to” or “hope to” or “may.” According to the Plan, the Postal Service “will transform [its] processing and logistics network” and “will realign [its] facility footprint and processing capacity.” *Id.* at 28. The Postal Service “will transition [its] Network Distribution Centers (NDCs) into new Regional Distribution Centers (RDC) focused on regional package acceptance and processing.” *Id.* at 29. The Postal Service “will consolidate [its] network” and “will also shift volume from an unreliable and costly air network to a better managed surface network.” *Id.* at 30. The Postal Service “will improve [its] delivery unit footprint.” *Id.* at 31. In total, the Plan uses the word “will” more than two hundred times to describe the Postal Service’s intentions. And as the Complaint alleges, the Postal Service’s other public statements reflect precisely the same certainty as the Plan. Compl. ¶¶ 65-74.

2. Commission review of the Plan now is consistent with the text and purpose of Section 3661.

The Complaint raises a colorable claim that Section 3661 demands immediate review of the Plan as a whole. Even if some subcomponents of the Plan are still in development, nothing in the text of Section 3661 requires that every part of a proposed change in the nature of postal services be “subject to imminent implementation,” USPS Br. at 8-9, 16, before the Postal Service requests an advisory opinion. Instead, Section 3661(b) provides:

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

The plain language of Section 3661(b) does not attach any level of development or detail to the words “change” and “proposal.” As a result, the “fact that an action or program is ‘evolutionary’ . . . does not except that action or program from the purview of the statute.” N75-1 Opinion at 21. The Postal Service must provide sufficient detail to allow the Commission to “analyze the

potential effects of the action or program in question,” but if a precise estimate of all of the effects is impossible, then the Commission will assess the “reasonably foreseeable consequences of the program from its intrinsic features” and the actual effects that are known. N75-1 Opinion at 21-22. Accordingly, the Commission has issued advisory opinions for proposals even when the Postal Service has asserted that it “cannot anticipate how its network will be configured in the future” based on the new initiative and that “it will take several years to subject all major components” of its network to review under the initiative and “implement any resulting operational changes,” N2006-1 Opinion at 7, 71-72; *see also, e.g.*, N2009-1 Opinion at 9-10 (beginning advisory opinion process even though the Postal Service claimed it “had no basis for estimating the number of stations and branches that will in fact have their operations discontinued as a result” and “no basis for quantifying the cumulative impact of the nature of any postal services, or whether any change will rise to the level of being substantially nationwide in scope”). As it has before, the Commission should not let the prospective nature of the Plan deter it from Section 3661 review.

Moreover, when to request an advisory opinion cannot be solely “within the discretion of the Postal Service,” USPS Br. at 17, because it is “the effect of a contemplated program . . . that controls in establishing whether that program accomplishes a change in the nature of postal services.” N75-1 Opinion at 20. As a result, the Postal Service must submit a proposal to the Commission *before* the effects of the change—whether direct or indirect—have a substantially nationwide impact on service. *E.g.*, Order 1461 at 15 (requiring an advisory opinion when the “collateral effects” of an initiative affect service). But the Postal Service does not always properly gauge when a change falls under Section 3661; indeed, this is the crux of the States’ Complaint. *See also, e.g., Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 884-87 (E.D. Pa. 2020)

(finding 2020 operational changes required Commission review); *New York v. Trump*, 490 F. Supp. 3d 225, 241-43 (D.D.C. 2020) (same). And because the effects of the Plan are already being felt, *see supra* Part II.A.1, now is the time to request an advisory opinion.

The “important policy implications” behind Section 3661 strongly favor Commission review of the Plan as a whole and at an early enough time that the Postal Service will be receptive to feedback on the entire plan. *See* Postal Rate Comm’n, Order 1312, *Order Denying United States Postal Service Motion for Reconsideration of Order No. 1307*, at 5 (May 7, 2001) [“Order 1312”]; 39 U.S.C. § 3661(a) (requiring the Postal Service to “develop and promote adequate and efficient postal services”); *id.* § 3661(c) (guaranteeing public participation in a hearing and requiring the Commission to determine whether the proposed change “conforms to the policies established” in Title 39). Indeed, the Commission has recognized that Section 3661(b) functions best when proposed changes are submitted early enough to allow for meaningful input on the change. *See, e.g.*, N75-1 Opinion at 65-70; Order 1312 at 4-6; Order 1461 at 15-16. Although Commission rules require submission not less than 90 days in advance, “there is no obstacle to filing earlier than that.” N75-1 Opinion at 69.

When the Postal Service fails to initiate a Section 3661(b) proceeding in advance of implementation, it “deprives itself of the intelligence that might be obtained from a public proceeding on the issue, and the benefit of a Commission advisory opinion.” Order 1312 at 4-5. In such cases, the “question of whether the Postal Service has planned a change that will provide adequate and efficient postal services is never independently examined.” *Id.* at 5. Moreover, as the Commission has observed, “public input is a hallmark of 39 U.S.C. § 3661.” Order 1320 at 9. But the Postal Service’s preferred approach would deprive the public of “the opportunity to provide its views,” Order 1312 at 5, and risks creating public confusion, since “one of the

benefits of a Commission proceeding is to notify the public of potential changes,” Order 1461 at 16. And the Postal Service prevents the Commission from “fulfilling its statutory requirement of providing” the Board of Governors and Postal Service management with an “independent analysis as contemplated by Congress.” Order 1312 at 5. Indeed, the role of the Commission is not only to “approve or disapprove the stated goals of a Postal Service program,” but also “predict how efficiently it will achieve those goals and offer such suggested improvements as are supported by the record.” N75-1 Opinion at 68.

Here, the Postal Service has developed a Plan it claims will, if implemented in full, allow the Postal Service to reliably deliver 95 percent of all mail and packages on time while operating with positive net income as of Fiscal Year 2023 or 2024. Plan at 7, 40, 56. To effectuate these goals, the Postal Service has finalized eleven key strategies, each with numerous subcomponents. *Id.* at 22-39. To justify its selection of strategies, the Postal Service has prepared detailed projections about how the Plan will affect the Postal Service’s financial and service performance. *Id.* at 42-55. If the States’ Complaint is allowed to proceed, the Commission will review the Plan as prepared to determine whether it conforms with the policies established by Title 39, § 3661(c); will achieve of the goals of financial sustainability and service excellence, N75-1 Opinion at 68; and will provide “adequate and efficient postal services,” Order 1312 at 5. As an independent body of experts, the Commission can further advise the Postal Service on whether it has properly considered all necessary factors and whether it should pursue different or modified strategies. The Commission will also gain a clear understanding of the Plan as a whole—including which strategies the Postal Service intends to implement when—and be able to plan for future requests for advisory opinions.

The States are not “improperly seek[ing] to interpose themselves into the Postal Service’s long-range planning responsibility” or “interfere unduly with Postal Service’s management of operations and business.” USPS Br. at 17. While “Congress did not intend for the courts to micromanage the operations of the USPS, requiring the USPS to comply with the statutory requirement that it obtain an advisory opinion . . . is not micro-managing; it is requiring the USPS to act within its statutory authority.” *New York*, 490 F. Supp. 3d at 243. The Postal Service has chosen to transform its operations in ways markedly different from prior strategic plans, *see infra* Part II.B., and in ways that will make significant changes in the nature of postal services, *see infra* Part III. The Plan is also a collection of interconnected and interdependent strategies whose effects and success cannot be measured in isolation. The States are simply asking that the Commission provide an “independent analysis” of the Plan as a whole, as Congress intended, and for an opportunity to provide their views. *See New York*, 490 F. Supp. 3d at 243 (“Congress clearly intended Section 3661 to require an opportunity for public participation and for independent review before the USPS implements service changes that will have a broad effect.”).¹⁷

B. Other sections of the Postal Reorganization Act do not obviate the requirement to seek an advisory opinion.

In its attempt to avoid review under Section 3361, the Postal Service argues that other provisions of the Postal Reorganization Act, or piecemeal review of subcomponents of the Plan, are an adequate substitute for review of the Plan as a whole to ensure its compliance with Title

¹⁷ Indeed, although the Plan states that USPS “will listen and learn and adapt the plan to take account of stakeholder advice and guidance, carefully considering advice from the Postal Regulatory Commission, findings from the Office of the Inspector General, and feedback from our customers,” Plan at 3, there is no indication that the Postal Service has made any changes to the Plan following feedback.

39. USPS Br. at 18-28. Neither argument is consistent with the Postal Reorganization Act or the purpose of Section 3661.

1. The Plan is a uniquely transformative strategic plan and not exempted from Section 3661.

The Postal Service contends that the Plan is a “strategic plan,” pursuant to 39 U.S.C. § 2802, and therefore exempted from review under Section 3661. But no provision in the Postal Reorganization Act excludes strategic plans from the scope of Section 3661, and the Postal Service does not identify one. That the Commission evaluates whether the Postal Service’s annual performance plan is *consistent* with its strategic plan, USPS Br. at 20-21, is entirely separate from reviewing the *substance* of a strategic plan that is a change in the nature of postal services with nationwide effect. Indeed, the Postal Service’s strategic plan is a separate document from its annual performance plan (39 U.S.C. § 2803) and its program performance report (39 U.S.C. § 2804), both of which are directly subject to review by the Commission in its annual compliance determination (“ACD”), 39 U.S.C. § 3653(d). The better reading of the Postal Reorganization Act is that Section 3661 supplements the regulatory oversight authority of the Commission by providing another avenue for review and feedback when the Postal Service determines to make a change in the nature of postal services with nationwide effect.

That no party previously filed a complaint under Section 3661 concerning prior strategic plans, USPS Br. at 19-20, is irrelevant to whether *this* strategic plan constitutes a nationwide change in the nature of postal services. But even if it did matter, the Plan is fundamentally different from the previous strategic and transformation plans issued by the Postal Service. USPS Br. at 19-20 & n.15.¹⁸ None of the five-year strategic plans for 1998-2002, 2001-2005, 2004-

¹⁸ Notably, the Postal Service neglected to cite to or mention its strategic plan for fiscal years 2020-2024, *Ready-Now → Future-Ready*—perhaps because the changes imposed by the

2008, and 2017-2021, for example, announced a new business model for the Postal Service or a reorientation of the Postal Service's management, network, and processes. Rather, these plans proposed initiatives within the existing business model of the Postal Service. They focused on enhancing programs already in place, improving customer service, engaging employees, responding to changing technology, and maintaining affordable services. Unlike this Plan, these previous plans did not propose:

- a change in use of air and ground transportation;
- an overhaul of the processing and logistics network;
- slower service standards for mail or packages; or
- realignment of locations where consumers may obtain postal products and services.¹⁹

The Vision 2013 Five-Year Strategic Plan for 2009-2013 did briefly discuss a plan to optimize the retail network, but the Postal Service promptly requested an advisory opinion (Docket No. N2009-1).²⁰ The FY2013-2017 Business Plan discussed the Network Rationalization Initiative, which was already the subject of an advisory opinion (Docket No. N2012-1); discussed a new five-day week for mail delivery, a version of which had already been the subject of a critical

Delivering for America Plan are a dramatic departure from what the Postal Service had adopted a little over a year prior.

¹⁹ See 1998-2002 USPS Five-Year Strategic Plan (<https://about.usps.com/strategic-planning/stratpln.pdf>); 2001-2005 USPS Five-Year Strategic Plan (<https://about.usps.com/strategic-planning/fiveyear.pdf>); 2004-2008 USPS Five-Year Strategic Plan (<https://about.usps.com/strategic-planning/fiveyearplan2004-2008.pdf>); FY 2017-FY 2021 USPS Five-Year Strategic Plan (<https://about.usps.com/strategic-planning/five-year-strategic-plan-2017-2021.pdf>).

²⁰ Vision 2013 Five-Year Strategic Plan for 2009-2013, at 8-9 (<https://about.usps.com/transforming-business/vision2013/full-document.pdf>).

Contrary to the Postal Service's characterization, USPS Br. at 19-20, the 2004-2008 Five-Year Strategic Plan merely said that the Postal Service would "redesign" "[a]ccess to postal products and services . . . in order to both reduce the cost of operating the network and to improve customer convenience." The 2004-2008 Five-Year Strategic Plan did not announce any intention to move or consolidate retail locations.

advisory opinion (Docket No. N2010-1) and which the Postal Service quickly abandoned; and discussed reducing the hours of some low-traffic post offices, seemingly consistent with the proposal the Commission had already reviewed and approved (Docket No. N2012-2).²¹

The *Delivering for America* Plan, by contrast, details significant departures from the status quo that will “transform” the Postal Service. *See* Compl. ¶¶ 38-74; *supra* at 2-3; *infra* Section III.

Even the prior plans that purport to reflect “transformative” changes have key differences from the Plan here. The Postal Service issued its 2002 “Transformation Plan” at the request of Congress in response to the challenges identified by a 2001 Government Accountability Office review. In developing the 2002 plan, the Postal Service conducted extensive outreach, soliciting and considering feedback from large and small consumers, Postal Service executives, focus groups representing consumers and businesses, suppliers, mailing industry association representatives, and labor/management representatives. *See* 2002 Transformation Plan, App’x J.²² The 2006-2010 Strategic Transformation Plan was meant to “maintain and build upon the momentum” of the 2002 Plan; consistent with its predecessor, it identified, in detail, further outreach by the Postal Service. *See* 2006-2010 Strategic Transformation Plan, App’x B.²³ Both transformation plans, therefore, complied with the statutory requirement that the Postal Service “solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan” when developing a strategic plan. 39 U.S.C. § 2802(d).

In the *Delivering for America* Plan, by contrast, the Postal Service states vaguely that it met with industry associations and received feedback at some point “prior to the release” of the

²¹ FY 2013-FY 2017 Business Plan (<https://about.usps.com/strategic-planning/five-year-business-plan-2012-2017.pdf>).

²² <https://about.usps.com/strategic-planning/2002transformationplan.pdf>.

²³ <https://about.usps.com/strategic-planning/stp2006-2010.pdf>.

Plan, but did not conduct other outreach or receive comments in advance. *See* Response of USPS Witness Monteith to Presiding Officer’s Information Request No. 1, Response to Question 31 (N2021-1, filing 118383, USPS-T-4) (June 7, 2021).²⁴ Instead, the vast majority of its outreach has been *post hoc, id.*, calling into question whether it complied with 39 U.S.C. § 2802(d).

In fact, customers representing “more than 90%” of Postal Service revenues in 2020 wrote Postmaster General DeJoy after he released the Plan to express their concern over the lack of “specific, direct, meaningful consultation with, or substantive input from, the customers who fund the Postal Service.” Letter from Hamilton Davison, et al., to Louis DeJoy, 1 (April 15, 2021).²⁵ “The idea of a decade-long strategic plan with zero market and customer input is disturbing; no major business would undertake this degree of reformation without meaningfully consulting with its customers.” *Id.* The letter expressed concern over the Plan’s “lack of clarity” in how it would grow parcel volume, lack of “creative solutions” to generating market-dominant mail volume, “punitive price increases on monopoly products,” and lower service standards, among other issues. *Id.* at 1-2. The letter asked the Postal Service to “suspend [t]he Plan and actions to implement it until it has pursued efforts to engage meaningfully with stakeholders, including specifically to explore ways of retaining and potentially growing Market Dominant Mail, and until Congress has had an opportunity to thoroughly vet the plan and potentially hold hearings upon it.” *Id.* at 2.

²⁴ <https://www.prc.gov/docs/118/118383/Monteith%20Designated%20Materials.pdf>.

²⁵ <https://www.mailershut.com/assets/docs/Other/Industry%20response%20to%20the%20plan%2004152021.pdf>.

In response, Postmaster General DeJoy wrote that he “disagree[s] with virtually all of the assertions in the letter.” Letter from Louis DeJoy to Leo Raymond, et al., 1 (Apr. 19, 2021).²⁶ He argued that the Postal Service had received “input from members of Congress and the mailing industry, and numerous other stakeholders, including some of the signers of the letter,” but then implied that much of this “input” had been submitted years ago, stating that it consisted of “the review of a large inventory of ideas, approaches, and initiatives . . . developed and advanced by industry and other stakeholders over the past 15 years.” *Id.* at 1-2. And these “ideas, approaches, and initiatives,” he claimed, had “accomplished very little.” *Id.* Postmaster General DeJoy’s outright dismissal of stakeholder feedback that does not comport with the Postal Service’s new “bold vision for transformation,” Plan at 2, is yet another reason for the Plan to undergo independent, objective review by the Commission.

It is not an “inevitable conclusion” that every strategic plan must undergo Commission review. USPS Br. at 23. As explained *infra* Part III, *this* Plan is a change within the meaning of Section 3661 and requires an advisory opinion. And it cannot be the case, as the Postal Service implies, that *no* strategic plan must ever undergo Commission review, no matter what changes that plan brings about. Regardless of whether any past or future strategic plan implements changes that require Commission review under Section 3661, this Plan does.

2. Reviewing subcomponents of the Plan cannot substitute for review of the Plan as a whole under Section 3661.

The Postal Service further contends that because some subcomponents of the Plan are, or may be, subject to review under other provisions of the Postal Reorganization Act, USPS Br. at 23-28, the entire Plan is exempt from Section 3661 review. But as with the Postal Service’s

²⁶ <https://catalogmailers.org/wp-content/uploads/2021/04/DeJoys-Industry-Letter-Response-4.19.21.pdf>.

argument about strategic plans, *supra* Part II.B.1, none of the other provisions in the Postal Reorganization Act remove the Plan from the scope of Section 3661.

Moreover, as explained, *supra* Part II.A.2, the purpose of Section 3661 is to enable the Commission and the public to provide input on proposed changes in the nature of postal services with nationwide effect. The Commission determines whether the proposed change comports with the policies of Title 39 and provides adequate and efficient postal services. The Commission also provides objective, expert analysis and recommendations to improve Postal Service proposals. None of the other mechanisms discussed by the Postal Service is an adequate substitute. First, the proceedings at Docket Nos. R2021-2 and CP2021-127 did not address the Plan as a whole. Second, the Commission prepares the ACD to determine “whether any rates or fees . . . were not in compliance with the applicable provisions of [chapter 39],” “whether any service standards . . . were not met,” and “whether the Postal Service has met the goals established” by its annual performance plan and program performance report, not to review strategic plans. 39 U.S.C. § 3653(b)(2), (d). That the Commission regularly asks the Postal Service to submit initiatives to improve service performance or other specific aspects of postal operations as part of this process, USPS Br. at 24-25, does not enable the Commission to assess the substance and merits of the Plan. Indeed, the fact that the Postal Service only submitted a new process for vendor selection when asked by the Commission *on March 29, 2021*, to identify all initiatives being implemented in 2021 with a reasonably foreseeable impact on service performance, USPS Br. at 25-26, only underscores the importance of separate, independent Section 3661 review of the whole Plan. *See supra* Part II.A.1. Finally, a provision allowing the Commission to initiate proceedings for reviewing changes to measurement systems, USPS Br. at 26-28, does not get at the substance and merits of the Plan as a whole.

* * *

Section 3661 serves a unique function in the Postal Reorganization Act, reflecting a balance established by Congress. In exchange for the Postal Service receiving significant financial and operational autonomy, this fundamental public service must operate with the oversight and expert advice of an independent regulatory body whenever it makes a change in the nature of postal services with nationwide effect. In the unique circumstances presented here, a plan to transform the Postal Service necessitates comprehensive review by the Commission. And such review now will enable the Commission to better conduct its oversight functions over the next decade and support the policies underlying Section 3661(b).

III. The Complaint raises a colorable claim that the changes reflected in the Plan likely implicate Section 3661(b).

The Postal Service makes much of the fact that Section 3661(b) applies only to a specified “class of decisions,” USPS Br. at 6, 14, 16-17, but there is no dispute on this point. The parties agree that the statute applies only to changes that satisfy three criteria: there must be a (1) change that is (2) in the nature of postal services, which (3) will generally affect service on a nationwide or substantially nationwide basis. 39 U.S.C. § 3661(b); *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 262–63 (5th Cir. 1975). “These three factors combine to demonstrate that Congress intended the safeguards of 3661 to apply only when changes of significance were contemplated.” *Buchanan*, 508 F.2d at 262-63. If it is unclear whether a change is sufficiently significant to trigger Section 3661(b), the Commission has urged the Postal Service to err on the side of caution and seek an advisory opinion “whenever, in its good faith judgment, an action or program involves a jurisdictional issue which is so difficult, doubtful, serious, or substantial as to make it a fair ground for litigation.” N75-1 Opinion at 9.

A. The Plan is a change within the meaning of Section 3661(b).

Contrary to the Postal Service’s mischaracterization, USPS Br. at 5-7, 10-16, the Plan is a change. To determine whether a Postal Service initiative “likely” or “arguably” constitutes a change within the meaning of Section 3661(b), “a quantitative determination is necessary.” *Buchanan*, 508 F.2d at 262. This factor requires a “meaningful impact” on service; “[m]inor alterations” which have a “minimal effect” on postal users do not fall within the statute. *Id.* The Commission has further articulated several factors that indicate the existence of a change. For example, a program constitutes a “change in the nature of postal services” if it “has as its goal, or will have as a reasonably foreseeable effect,” an “appreciable alteration in the accessibility of postal services to the public.” N75-1 Opinion at 72-73. This inquiry is focused not on a “‘net’ or aggregate effect,” but on “the effect on representative mailers.” *Id.* at 73. A change will also trigger Section 3661(b) when it has as its goal or reasonably foreseeable effect an “appreciable alteration in the type or quality of postal services offered to the public.” *Id.* at 72-73.

As an initial matter, the Postal Service’s assertion that the Plan’s subcomponents should be analyzed separately under Section 3661(b), USPS Br. at 10-16, runs counter to the Postal Service’s own position and public statements. The Plan is a single, unified strategic document whose subcomponents are interconnected and interdependent. *E.g.*, Postal Reg. Comm’n, *Advisory Opinion on Service Changes Associated with First-Class Mail and Periodicals*, at 6 n.3 (July 20, 2021) (N2021-1)²⁷ [“N2021-1 Opinion”] (noting that the Plan is “significantly broader than the specific advisory opinion request at issue in this docket” and that other subcomponents of the Plan may cause “a much different impact on postal services than what is presented and

²⁷ https://www.prc.gov/docs/119/119311/Docket%20No.%20N2021-1_Advisory%20Opinion.pdf.

evaluated in this docket”); Postal Reg. Comm’n, *Advisory Opinion on Service Changes Associated with First-Class Package Service*, at 7 n.8 (Sept. 29, 2021) (N2021-2)²⁸ [“N2021-2 Opinion] (same). Repeatedly, Postal Service leadership has insisted that it “will only be able to achieve [its] financial stability and service excellence goals if [it] successfully implement[s] the full breadth and totality of the plan elements.” Plan at 40. Similarly, the financial projections within the Plan assume that its subcomponents will be implemented together. *See* Plan at 7 (“By implementing the totality of the strategies identified above—and doing so in a timely manner—we project that we will operate with a positive net income beginning in 2023 or 2024 and realize break-even operations over the next ten years.”); *id.* at 46 (discussing its financial projections and noting that “[t]he incremental impact of each initiative is layered on top of the base plan taking into account any dis-synergies that result from combining various initiatives”). The Postal Service may not repeatedly insist that the Plan’s subcomponents be considered together, only to break them into pieces to avoid its regulatory obligations.

Assessing the Plan as a cohesive whole is consistent with recent federal caselaw applying Section 3661. For example, in 2020, government and private plaintiffs challenged a series of operational changes to how the Postal Service “collects, processes and delivers mail” instituted by the Postal Service’s new leadership. *See, e.g., New York*, 490 F. Supp. 3d at 233; *see also Pennsylvania*, 490 F. Supp. 3d at 845-55. Many of these changes were announced as separate policies, at different times, and in different ways. *See New York*, 490 F. Supp. 3d at 233-34. In enjoining these initiatives, the courts nevertheless relied on evidence of the *combined* effect of the changes in assessing the merits of the plaintiffs’ Section 3661(b) claim. *Id.* at 243 (citing “evidence showing that the reduction in extra and late trips *combined with* the reduction in

²⁸ https://www.prc.gov/docs/119/119881/N2021-2_Advisory%20Opinion.pdf.

sorting machines resulted in nationwide delays” (emphasis added)); *see also Pennsylvania*, 490 F. Supp. 3d at 885 (citing evidence discussing multiple changes together, including policies on both transportation and overtime). If evaluating related initiatives together is consistent with Section 3661, it is even more appropriate for the Commission to holistically review a single strategic plan whose subcomponents all fall under the same umbrella.

Taken as a whole, the Plan reflects a transformation of the Postal Service on a level that has seldom been seen, which “likely,” or at least “arguably,” constitutes a change triggering Section 3661(b) review. Fundamentally, the Plan changes Postal Service operations from one focused on delivering mail to one focused on the growth in the package delivery market.²⁹ Many of the Plan’s subcomponents reflect this transformation. Compl. ¶¶ 50-63; *see supra* at 2-3. Such all-encompassing changes to virtually every aspect of how the Postal Service operates are not mere “[m]inor alterations”—they are plainly the type of changes for which a “meaningful impact on service” is a reasonably foreseeable effect. N75-1 Opinion at 72-73. The Plan therefore requires Section 3661(b) review. *Buchanan*, 508 F.2d at 262. Indeed, the Postal Service itself has made repeated statements emphasizing the magnitude of its proposed changes. *See* Compl. ¶¶ 66-74. These statements further confirm that the Plan contains “changes” within the meaning of Section 3661(b).³⁰

²⁹ Package volume represents “only a minor portion of overall volume.” Plan at 10 n.2. The vast majority of Postal Service packages are competitive products, but all competitive products make up only 3.9 percent of total Postal Service volume. *See id.*

³⁰ While courts have recognized that “[t]he agency’s description of its own change is not determinative,” *Pennsylvania*, 490 F. Supp. 3d at 884, they have repeatedly pointed to such statements in determining whether a change falls within Section 3661(b). *See id.* (rejecting Postal Service’s argument that its operational policies were not a change because such assertions were “belied by the agency’s own pronouncements and substantial evidence in the record”); *New York*, 490 F. Supp. 3d at 242 (rejecting the Postal Service’s argument that its initiatives do not constitute a “change” in part because that position was “not supported based on USPS’s own

The Postal Service’s assertion that the Plan is “not itself a change” because it “merely announces” its planned initiatives, USPS Br. at 6, should be rejected. This argument misunderstands the nature of the States’ challenge. The States do not argue that the issuance of a strategic plan alone violates Section 3661(b); the Complaint is clearly targeted toward the transformative change *caused by* this strategic plan. Reviewing the underlying initiatives announced by the Plan is both sensible and consistent with Commission precedent. Given the nature of such changes, the Postal Service cannot credibly argue that they will have “no impact on service whatsoever.” USPS Br. at 6.

B. The Plan is a change in the “nature of postal services” as contemplated by Section 3661(b).

The Plan effectuates a transformative change in the nature of postal services. The Postal Reorganization Act defines “postal services” as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” 39 U.S.C. § 102(5). Because the effect of a proposed change in the nature of postal services controls, *see supra* Part II.A.2, “the perspective of those who use postal services must be paramount” when determining whether Section 3661 review is necessary. N75-1 Opinion at 20; *see also Buchanan*, 508 F.2d at 263 (whether a change is “in the nature of postal services” involves “a qualitative examination of the manner in which postal services available to the user will be altered”).

The profound changes described above, as explicitly detailed in the Plan, will alter mail sorting, transportation, delivery and other ancillary functions and are therefore likely “in the

statements”); *NAACP v. U.S. Postal Serv.*, 496 F. Supp. 3d 1, 17-18 (D.D.C. 2020) (finding that the plaintiff “demonstrated that [the Postal Service’s] position that [its proposed changes] do not constitute a ‘change’ is not supported by the USPS’s own statements”).

nature of postal services.” By the plain language of the statute, therefore, the Plan will change the nature of postal services. Moreover, from the postal user’s perspective, the Plan purports to, among other things: “enable growth in [the Postal Service’s] package delivery business,” Plan at 5; allow businesses to “reach up to 90 percent of the population in one day and more than 95 percent of the contiguous U.S. population in two days,” *id.* at 24; slow nearly 40 percent of First-Class Mail and a significant percent of First-Class Package Service, *id.* at 25-27; supplement “customers’ growing package volume,” *id.* at 28; and “align retail footprint, hours, and services to meet evolving customer demands,” *id.* at 34. These are all significant changes in how the American public will interact with the Postal Service. That the Postal Service intends to improve the postal experience does not eliminate the need for Commission review; nothing in Section 3661 limits proposals to negative changes. *See, e.g.,* Postal Rate Comm’n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 5 (Sept. 8, 1975) (N75-2)³¹ [“N75-2 Opinion”] (providing advisory opinion on proposal designed to provide “essentially the same or better service”).

Moreover, the Plan’s most transformative subcomponents—from processing and transportation network changes to delivery and retail network changes—have already been recognized by the Commission in prior proceedings as constituting changes in the nature of postal services warranting review. The Commission has addressed initiatives that entail changes to formal service standards, for example, in Docket Nos. N75-2, N89-1, N2012-1 and N2014-1.³²

³¹ <https://www.prc.gov/prcarchive/viewpdf.aspx?docid=508276873>.

³² *See* N75-2 Opinion at 5, 14-17 (addressing proposed improvements to domestic first-class mail service standards and rejecting the Postal Service’s argument that cost data and other information was not relevant to its review); Postal Rate Comm’n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 1 (July 25, 1990) (N89-1) (advising that the Postal Service “should not implement a plan to downgrade First-Class delivery standards on

In addition, the Commission has reviewed proposed changes to the Postal Service’s mail processing network in Docket Nos. N2006-1 and N2012-1.³³ Those proceedings also addressed changes to the Postal Service’s transportation network.³⁴ The Commission has reviewed an operational transition towards “largely shape-based processing and distribution concepts” in Docket No. N2006-1.³⁵ And, the Commission has reviewed initiatives concerning the Postal Service’s retail network changes in Docket Nos. N75-1, N2009-1, N2011-1, and N2012-1.³⁶

a nationwide basis”); N2012-1 Opinion at 1-4 (concluding that the Postal Service’s proposal to degrade service in connection with a network consolidation was based on insufficient modeling and inflated estimates of cost savings); Postal Reg. Comm’n, *Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services*, at 1-3 (Mar. 26, 2014) (N2014-1), https://www.prc.gov/docs/89/89493/Docket%20No.%20N2014-1_Advisory%20Opinion.pdf (reviewing a proposed change to delivery standards for mail entered at Destination Sectional Center Facilities on Fridays and Saturdays, and recommending additional testing and analysis to further develop the initiative).

³³ See N2006-1 Opinion at 3, 5 (finding the record insufficient to establish “that the proposed [processing and transportation network] realignment program . . . will meet its declared goals” and recommending the initiative “be supplemented with procedures that will assure appropriate public participation earlier in the decisionmaking process”); N2012-1 Opinion at 1 (concluding that the Postal Service’s proposal to consolidate its processing and transportation networks yielded less cost savings than projected and did not require a degradation in service standards).

³⁴ See *supra* note 33.

³⁵ See N2006-1 Opinion at 9 (concluding that “the changes to be made . . . are likely to involve qualitative ‘changes in the nature of postal services’ because they contemplate moving from mail class-based distinctions in designing postal operations to alternative, largely shape-based processing and distribution concepts”).

³⁶ See N75-1 Opinion at 1 (reviewing a program that adopts market analysis techniques to determine the location of postal retail facilities and the staffing of such facilities); N2009-1 Opinion 8-11 (reviewing a proposal to consolidate the retail network, despite the Postal Service’s argument that the proposal did not fall within section 3661(b)); N2011-1 Opinion at 1 (reviewing a proposal to evaluate retail locations for potential closure); Postal Reg. Comm’n, *Advisory Opinion on Post Office Structure Plan*, at 1 (Aug. 23, 2012) (N2012-2), https://www.prc.gov/docs/85/85013/n2012-2_adv_op_082312.pdf (considering a request for an advisory opinion on an initiative “to match post office retail hours with workload,” and finding it was a “significant improvement” to prior proceedings based on Commission feedback incorporated by the Postal Service).

Most of the foregoing proceedings involved only one or two of these significant types of changes. The Plan contemplates all of these changes, and more, within the same sweeping agenda.

C. The Plan will affect service on a substantially nationwide basis.

The Plan will have a nationwide effect on service. For a change to affect service on a substantially nationwide basis, it must affect a “broad geographical area.” *Buchanan*, 508 F.2d at 263. The breadth of the change’s impact may be “evidenced by its hierarchical dissemination from Postal Service headquarters and its implementation at multiple locations in different areas throughout the country.” *Pennsylvania*, 490 F. Supp. 3d at 886 (citing N75-1 Opinion at 26); *see id.* at 887 (“Defendants seem to concede that these changes are occurring at a nationwide level; indeed, they could not plausibly argue otherwise. The changes in this case come from headquarters.”).

The Postal Service does not dispute that the Plan will affect service nationwide, and for good reason: it will transform how the Postal Service, a nationwide organization, provides nationwide service. The Plan was developed and issued by Postal Service leadership, clearly reflecting a “hierarchical dissemination from Postal Service headquarters.” *Pennsylvania*, 490 F. Supp. 3d at 886. And its implementation will impact “multiple locations in different areas throughout the country,” *id.*, because by its plain terms, it purports to address issues that extend throughout the Postal Service’s nationwide operations, *see* Plan at 2 (“The team evaluated and quantified the many compounding challenges across the postal enterprise.”). The Postal Service’s own statements regarding the transformative nature of the Plan confirm its nationwide scope. *See* Compl. ¶¶ 66-74; *supra* 24-25 n.30; *see also* N2009-1 Opinion at 11 (“As an indication of the scope of the Initiative, the Postal Service asserts that the Initiative is a nationwide program[.]”).

D. The prior proceedings this year before the Commission do not obviate the need for Commission review now.

Finally, the Postal Service suggests that the States' Section 3661(b) claim is foreclosed because they did not formally intervene in the 2021 service standard proceedings "to request discovery or introduce evidence or argument." USPS Br. at 11 n.6. And, the Postal Service asserts, the Complaint should be dismissed because the Commission has purportedly "already addressed" the Complaint's allegations in those proceedings. *Id.* at 12. The Postal Service is incorrect on both counts.

First, as the Postal Service was no doubt aware when it formulated its narrow requests for advisory opinions in Docket Nos. N2021-1 and N2021-2, the Commission's regulations limit the scope of advisory opinion proceedings to "the specific changes proposed by the Postal Service" in its request. *See* 39 C.F.R. § 3020.102(b); *see also* Postal Reg. Comm'n, Order 5875, at 8 (Apr. 23, 2021)³⁷ (applying this limitation to proceedings in Docket No. N2021-1); Postal Reg. Comm'n, Order 5920, at 9 (June 21, 2021)³⁸ (applying same limitation to Docket No. N2021-2 proceedings). This restriction was imposed with the express purpose to "not only limit participants' needs for discovery" (ostensibly by deeming out of scope discovery that is not relevant to the Postal Service's specific request), but also to "limit the potential discovery burdens on the Postal Service." *Revisions to Procedural Rules; Final Rule*, 79 Fed. Reg. 33,390, 33,401 (June 10, 2014). While some of the States in this proceeding submitted a statement of position in Docket No. N2021-2 requesting that the Commission initiate a separate docket to conduct a special study or public inquiry "within the broader context" of the Plan, Statement of

³⁷ https://www.prc.gov/docs/116/116672/order_5875.pdf.

³⁸ <https://www.prc.gov/docs/118/118981/Order%20No.%205920.pdf>.

Position at 14 (Aug. 20, 2021) [“Statement of Position”],³⁹ this request only underscores the fact that those proceedings were not intended to ensure adequate oversight of the Postal Service’s sweeping changes.

Indeed, at various points in both proceedings, the Postal Service refused to address issues outside the scope of its request, including those relevant to the broader array of changes in the Plan, and even those relating to service standards for other mail products. In the proceedings concerning First-Class Mail, for example, the Postal Service dismissed “concerns about the delivery of prescription medications,” because “[s]uch packages [were] not at issue in this proceeding.” Reply Brief of the United States Postal Service, at 13 n.11 (June 25, 2021) (N2021-1)⁴⁰ [“USPS N2021-1 Reply Brief”]. Two months later, in the First-Class Package Service proceedings, the Postal Service brushed off complaints about First-Class Mail, because “in the present docket, the Commission is reviewing proposed changes to the service standards only for [First-Class Package Service], not for [First-Class Mail].” Reply Brief of the United States Postal Service, at 6 (Aug. 27, 2021) (N2021-2).⁴¹ The Postal Service’s restrictive approach to addressing issues in these proceedings, however, did not extend to circumstances where the Plan’s full context supports, rather than undermines, its proposals. For example, the Postal Service urged the Commission, when considering criticisms of its proposed changes, to view

³⁹ <https://www.prc.gov/docs/119/119603/Multistate%20Statement%20of%20Position.pdf>.

⁴⁰ <https://www.prc.gov/docs/119/119073/USPS%20Reply%20brief%20FINAL.pdf>.

⁴¹ <https://www.prc.gov/docs/119/119641/USPS%20Reply%20Brief.Final.pdf>.

Similarly, the Postal Service’s assertion that it “duly . . . considered” comments in response to its proposed rule on First-Class Mail is misplaced. USPS Br. at 11 n.4. In its final regulation on changes to First-Class Mail and Periodicals, the Postal Service deemed “non-germane” and refused to address issues such as “[p]otential changes to [its] retail network,” and service standard changes to First-Class Package Service, both of which are in fact contemplated in the Plan. Compl. ¶ 130.

them “in the larger context of the Plan to create a fully sustainable service for the future.” USPS N2021-1 Reply Brief at 4; *see also* Statement of Position at 14-15 & nn.65-66 (discussing statements by the Postal Service urging the Commission to consider the cost-savings purported to be generated by slowing First-Class Mail when assessing the cost-savings of slowing First-Class Package Service).

Second, the Postal Service’s contention that dismissal is proper because the Commission has “already addressed” the Complaint’s allegations in those proceedings is similarly meritless. USPS Br. at 12. As the States allege in the Complaint, the Commission’s advisory opinions observed that the Plan was “significantly broader” than the requests before it and expressly declined to review the combined impact of the changes in the Plan. N2021-1 Opinion at 6 n.3; N2021-2 Opinion at 7 n.8. Indeed, the Commission itself observed that the reviewed changes to service standards for First-Class Mail and First-Class Package Service may have a “much different impact on postal services than what is presented and evaluated in this docket” when combined with other aspects of the Plan. N2021-1 Opinion at 6 n.3; N2021-2 Opinion at 7 n.8. And the Postal Service concedes that the Commission did not address the States’ request to consider the service standard changes in conjunction with the entire Plan. *See* USPS Br. at 12 n.8. For these reasons, *APWU v. PRC*, 842 F.3d 711 (D.C. Cir. 2016), is not relevant here.

* * *

The Plan is a far-reaching and singular effort to transform the Postal Service. Because it constitutes a change in the nature of postal services with nationwide effect, the Postal Service must submit the Plan to the Commission for an advisory opinion under Section 3661.

CONCLUSION

For the foregoing reasons, the States’ Complaint presents material issues of fact and law, and the Commission should deny the Postal Service’s motion to dismiss.

Respectfully submitted this 10th day of November, 2021.

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania
MICHAEL J. FISCHER
Chief Counsel & Executive Deputy Attorney General
AIMEE D. THOMSON
JACOB B. BOYER
RYAN B. SMITH
Deputy Attorneys General
Pennsylvania Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103
(267) 374-2787
athomson@attorneygeneral.gov
mfischer@attorneygeneral.gov
Attorneys for the Commonwealth of Pennsylvania

ROB BONTA
Attorney General
State of California
MARISSA MALOUFF
ANTHONY O'BRIEN
LISA C. EHRLICH
Deputy Attorneys General
Office of the Attorney General
for the State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
(415) 510-3489
lisa.ehrlich@doj.ca.gov
Attorneys for the State of California

LETITIA JAMES
Attorney General
State of New York
MICHAEL J. MYERS
Senior Counsel
RACHEL HANNAFORD
LINDSAY MCKENZIE
Assistant Attorneys General
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-8250
rachel.hannaford@ag.ny.gov
lindsay.mckenzie@ag.ny.gov
Attorneys for the State of New York

WILLIAM TONG
Attorney General
State of Connecticut
JOSHUA PERRY
Special Counsel for Civil Rights
Office of the Connecticut Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5318
joshua.perry@ct.gov
Attorneys for the State of Connecticut

KATHLEEN JENNINGS
Attorney General
State of Delaware
CHRISTIAN DOUGLAS WRIGHT
Director of Impact Litigation
VANESSA L. KASSAB
Deputy Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8881
christian.wright@delaware.gov
vanessa.kassab@delaware.gov
Attorneys for the State of Delaware

KWAME RAOUL
Attorney General
State of Illinois
ELIZABETH MORRIS
Deputy Bureau Chief, Special Litigation
Bureau
REBEKAH NEWMAN
Assistant Attorney General, Special Litigation
Bureau
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601
(773) 590-6961
elizabeth.morris@ilag.gov
rebekah.newman@ilag.gov
Attorneys for the State of Illinois

BRIAN E. FROSH
Attorney General
State of Maryland
JEFFREY P. DUNLAP
Assistant Attorney General
200 St. Paul Place
Baltimore, MD 21202
T: (410) 576-7906
F: (410) 576-6955
jdunlap@oag.state.md.us
Attorneys for the State of Maryland

KARL A. RACINE
Attorney General
District of Columbia
KATHLEEN KONOPKA
Deputy Attorney General
BRENDAN DOWNES
Assistant Attorney General
Office of the Attorney General for the District
of Columbia
400 6th Street N.W.
Washington, D.C. 20001
(202) 805-7515
brendan.downes@dc.gov
Attorneys for the District of Columbia

AARON M. FREY
Attorney General
State of Maine
PAUL SUITTER
Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8888
paul.suitter@maine.gov
Attorneys for the State of Maine

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts
DAVID C. KRAVITZ
Deputy State Solicitor
Office of the Massachusetts Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2427
david.kravitz@mass.gov
Attorneys for the Commonwealth of
Massachusetts

DANA NESSEL
Attorney General
State of Michigan
HEATHER S. MEINGAST
ERIK A. GRILL
Assistant Attorneys General
PO Box 30212
Lansing, Michigan 48909
517-335-7559
meingasth@michigan.gov
grille@michigan.gov
Attorneys for the State of Michigan

AARON D. FORD
Attorney General
State of Nevada
HEIDI PARRY STERN (Bar. No. 8873)
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
hstern@ag.nv.gov
Attorneys for the State of Nevada

HECTOR BALDERAS
Attorney General
State of New Mexico
MATT BACA
Chief Counsel
NICHOLAS M. SYDOW
Civil Appellate Chief
Office of the New Mexico Attorney General
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 490-4060
mbaca@nmag.gov
nsydow@nmag.gov
Attorneys for the State of New Mexico

KEITH ELLISON
Attorney General
State of Minnesota
NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2134
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
Attorneys for the State of Minnesota

ANDREW J. BRUCK
Acting Attorney General
State of New Jersey
MAYUR P. SAXENA
Assistant Attorney General
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07102
mayur.saxena@law.njoag.gov
Attorneys for the State of New Jersey

JOSHUA H. STEIN
Attorney General
State of North Carolina
SRIPRIYA NARASIMHAN
Deputy General Counsel
SARAH G. BOYCE
Deputy Solicitor General
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
(919) 716-6421
snarasimhan@ncdoj.gov
sboyce@ncdoj.gov
Attorneys for the State of North Carolina

ELLEN ROSENBLUM
Attorney General
State of Oregon
MICHAEL KRON
Special Counsel
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6002
michael.c.kron@doj.state.or.us
Attorneys for the State of Oregon

MARK R. HERRING
Attorney General
Commonwealth of Virginia
MICHELLE S. KALLEN
Acting Solicitor General
Office of the Virginia Attorney General
202 North 9th Street
Richmond, VA 23219
(804) 786-7704
mkallen@oag.state.va.us
Attorneys for the Commonwealth of Virginia

ROBERT W. FERGUSON
Attorney General
State of Washington
KRISTIN BENESKI, WSBA #45478
First Assistant Attorney General
ANDREW HUGHES, WSBA #49515
Assistant Attorney General
Office of the Washington Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
kristin.beneski@atg.wa.gov
andrew.hughes@atg.wa.gov
Attorneys for the State of Washington

PETER F. NERONHA
Attorney General
State of Rhode Island
KEITH HOFFMANN
Special Assistant Attorney General
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400, ext. 1882
khoffmann@riag.ri.gov
Attorneys for the State of Rhode Island

THOMAS J. DONOVAN, JR.
Attorney General
State of Vermont
JAIME RENNER
Assistant Attorney General
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
(802) 279-5496
jamie.renner@vermont.gov
Attorneys for the State of Vermont